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GP/1761 #4

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DW

Application of: J. BAENSCH et al.

Application No.: 09/511,780

Group Art Unit: 1761

Filed: February 23, 2000

Examiner: R. Masden

For: CREAM-BASED FOOD COMPOSITION
AND PROCESS OF MANUFACTURE

Attorney Docket No.: 88265-305

RESPONSE TO RESTRICTION REQUIREMENTAssistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Examiner's restriction requirement dated April 8, 2001, applicants elect, with traverse, the invention of Group IV, composition claims 13-25 for prosecution in this application.

The restriction requirement is incorrect at least because of claims 11 and 12, which are composition claims that should be examined along with the elected claims. It is well settled that the patentability of a product-by-process claim must be evaluated on the basis of the product claim and not on the process recitations in that claim. As claims 11-12 are directed to essentially the same type of cream composition as claims 13-25, these claims should all be examined together at this time.

Furthermore, since the patentability of the composition claims would, of necessity, require a search of the prior art with regard to the process of making such compositions, it is respectfully submitted that the Examiner also remove the restriction requirement as to those claims (claims 1-10) as well and to examine all claims together in this application.

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This response is timely filed on April 9, 2001 because April 8, 2001 was a Sunday.

Thus, no fees are believed to be due for the submission of this response. Should any fees be required, please charge such fees to Winston & Strawn deposit account no. 501-814.

A change of address form is enclosed.

Respectfully submitted,

Date: _____

4/9/01


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